

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR No.7704 of 2016
Decided on: 16.11.2016**

Sohan Lal (now deceased) represented by LRs

....Petitioners

Versus

Surinder Kumar and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Gursimran Singh, Advocate
for the petitioners.

REKHA MITTAL, J.

The present petition directs challenge against order dated 04.10.2016 (Annexure P3) whereby the objections filed by the petitioner in execution application '*Surinder Kumar Sangar vs Sohan Lal*' have been dismissed.

Surinder Kumar Sangar filed a suit for mandatory injunction and recovery of Rs.700/- as compensation in respect of shop depicted in Red colour in the site plan with boundaries detailed in headnote of the plaint. The suit was dismissed by the trial Court vide judgment and decree dated 11.08.2016; the appeal preferred by the respondent/decree-holder was allowed vide judgment and decree dated 30.09.2009. The regular second appeal preferred at the behest of unsuccessful JD failed and the judgment and decree passed by the First Appellate Court has attained finality.

The successful decree-holder filed an application for execution of the decree wherein the legal representatives of JD (since deceased) namely Janak Raj and others filed the objections that came to

be dismissed by the Executing Court vide order impugned.

Counsel for the petitioner has made two fold submission to challenge correctness and legality of the order. The first submission made by counsel is that the decree-holder had submitted a wrong site plan giving incorrect measurements and boundaries, therefore, the objection petition is required to be decided after framing of issues and permitting the objectors to adduce evidence. Another submission made by counsel is that as the decree has been passed for mandatory injunction, the same, at best, can be executed by invoking Order 21 Rule 32 CPC, therefore, the Court below has committed an error by issuance of warrants of possession. In support of his contention, he has referred to judgment of the Madhya Pradesh High Court ***“Pooran Das vs Parmeshwar Das”***, 2014(85) RCR (Civil) 711.

I have heard counsel for the petitioner and perused the paperbook particularly the order impugned.

The plea of the petitioner that the site plan submitted by the decree-holder is wrong or it does not reflect the correct measurements and boundaries is mis-conceived and merits outright rejection. Any such plea with regard to correctness or otherwise of the site plan was a question to be raised and decided during trial. If the petitioner had not raised any such issue at an appropriate stage, he is deemed to have waived of his right to raise such an issue. On the contrary, if such an issue was actually raised, the same is deemed to be rejected in view of the fact that suit filed by the respondent/plaintiff was decreed by the First Appellate Court and the judgment passed by

the Court of appeal has been affirmed throughout. If the petitioner is permitted to raise such an issue in the execution proceedings, there would be no end to the litigation and the decree may not be executed for all the times to come.

With regard to plea that the Executing Court has committed an error by issuance of warrants of possession, the judgment of Madhya Pradesh High Court in *Pooran Das's case (supra)* is an answer. It has been held therein that the provisions of Section 47 CPC empowers the Executing Court to objectively interpret the decree with the available evidence on record to facilitate the execution and not to discard it as a dead letter. In the case at hand, the respondent/decreed-holder filed a suit for mandatory injunction that the petitioner (since deceased)/defendant should be directed to stop/cease to use the shop in question that was given on licence vide writing dated 03.02.1999. Plea of the petitioner that he was engaged as a tenant in the suit shop was negated by the Court of appeal and thereafter he remained unsuccessful to prove his plea of tenancy. The very purpose of filing of the suit for mandatory injunction was to recover possession of the suit shop by directing the JD to stop using the shop in question. If the decree-holder is deprived of right to recover possession of the suit shop despite having been successful, it would render the decree a dead letter and put a premium for an unsuccessful JD to retain possession of the shop. In this view of the matter, contention raised by counsel for the petitioner sans merit and liable to be rejected.

No other point has been raised.

For the foregoing reasons, the petition fails and is accordingly dismissed *in limine*. No order as to costs.

16.11.2016
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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No